ligent in allowing his son to get possession of a loaded rifle and whether such negligence was the cause of the injury, were questions for the jury. *Salisbury* v. *Crudale,* (R. I., 1918), 102 Atl. 731.

The rule is well settled that a parent is not liable for the torts of his child. *Chastain* v. *Johns,* 120 Ga. 977. *Kumba* v. *Gilham,* 103 Wis. 312. But acts of the parent may be so related to acts of the child as to constitute negligence in the parent, his acts being the *causans* of the injury. *Palm* v. *Ivorson,* 117 Ill. App. 535. For instance there may be a legal duty upon a parent towards the general public to guard against a boy obtaining possession of guns or other dangerous weapons. *Sullivan* v. *Creed,* (1904), 2 Ir. K. B. D. 317. The liability rests on the duty of every man to use his own property so as not to injure the person or property of others. *Carter* v. *Towne,* 98 Mass. 567. In cases of this character the question of the negligence of the parent is a question for the jury. *Brittingham* v. *Stadiem,* 151 N. C. 299; *Sullivan* v. *Creed, supra; Meers* v. *McDowell,* 110 Ky. 926; *Binford* v. *Johnston,* 82 Ind. 426; *Phillips* v. *Barnett,* (N. Y.), 2 City Ct. R. 20. But in *Swanson* v. *Crandall,* 2 Pa. Super. Ct. 85 it was held that the discovery of a revolver in a bureau drawer by a child of five years could not have been reasonably anticipated and that there was no evidence to go to the jury on the question of negligence. In *Phillips* v. *Barnett,* (N. Y.), (*supra*) on almost the same facts the question of negligence was submitted to the jury. In *Hagerty* v. *Powers,* 66 Cal. 368 it was held that the father of a child eleven years old is not liable for negligently allowing him to have a loaded pistol with which he carelessly shot another child. This case was poorly decided in that the court totally ignored the question of the father's negligence and based their decision entirely on the theory that a father is not liable for the torts of the son. A parent is not liable for the tort of his infant son arising from permitting his son to use fire arms where it appears that such son was twelve years of age, experienced in the use of fire arms, acquainted with their construction and proper mode of carrying, handling and discharging the same and had been habitually careful. *Palm* v. *Ivorson,* (*supra*).

Sales—Implied Warranty in Sales of Food.—Defendant, a druggist, sold to the plaintiff, for consumption, ice-cream, which he had prepared. Plaintiff became violently sick after eating it due to the presence in it of a poison known as tyrotoxicon. *Held,* defendant was liable on an implied warranty that the ice-cream was fit for human consumption. *Race* v. *Krum,* (N. Y., 1918), 118 N. E. 853.

Whenever special reliance is placed by the vendee on the vendor in the selection of wholesome food, the courts uniformly hold there is an implied warranty as to fitness. *Bigge* v. *Parkinson,* 7 H. & N. 955; *Beer* v. *Walker,* 37 L. T. N. S. 278; *Burrows* v. *Smith,* 10 T. L. R. 246; *Wallis* v. *Russell* [1902] 2 Ir. R. 585, even though the vendee is a skilled tradesman buying to sell again, *Copas* v. *The Anglo-American Provision Co.,* 73 Mich. 541; *Bailey* v. *Nickols,* 2 Root (Conn.) 407; *Truschel* v. *Dean,* 77 Ark. 546; or if the food is for animals: *Coyle* v. *Baum,* 3 Okla. 695; *Deason* v. *McNeill,* 133 Ill.

App. 304; or where the contract is executory, and the vendee has no opportunity to examine the goods until delivery: *Armour* v. *Gundersheimer,* 23 App. Cas. (D. C.) 210; *Bigge* v. *Parkinson* (*supra*). But there is no warranty if the vendee is a trader not relying on the judgment of the vendor: *Humphreys* v. *Comline,* 8 Blackf. (Ind.) 516; *Jones* v. *Murray,* 3 T. B. Mon. (Ky.) 83; *Zielinski* v. *Potter,* (Mich., 1917), 161 N. W. 851; *Emerson* v. *Brigham,* 10 Mass. 197; *Hanson* v. *Hartse,* 70 Minn. 282; *Moses* v. *Mead,* 5 Den. (N. Y.) 617; *Goldrich* v. *Ryan,* 3 E. D. Smith (N. Y.) 324; *Needham* v. *Dial,* 4 Texas Civ. App. 141. But where, as in the principal case, the vendor was the manufacturer or producer, and he sells directly to the consumer the warranty is always implied, and he sells at his peril. 3 Bl. Com., 165; *Moore* v. *McKinley,* 5 Calif. 471, (*dictum*); *Moses* v. *Mead* (*supra*) (*dictum*); *Flessher* v. *The Carstens Packing Co.,* 93 Wash. 48; *Getty* v. *Rountree,* 2 Chandler (Wis.) 28 (*dictum*). The same rule prevails under the civil law. *Doyle* v. *Fuerst and Kraemer,* 129 La. 838, 906; Ann. Cases, 1913 B, 1110, 40 L. R. A. (N. S.) 480. In the following cases it was held there was an implied warranty where the vendor was not the maker of the food products. *Wiedeman* v. *Keller,* 171 Ill. 93; *Askam* v. *Platt,* 85 Conn. 448; *Rinaldi* v. *Mohican Co.,* 157 N. Y. Supp. 561; *Leahy* v. *Essex Co.,* 148 N. Y. Supp. 1063. It did not appear in this case whether the defendant, a restaurant keeper, had made the pie or not. But see *Farrell* v. *The Manhattan Market Co.,* 198 Mass. 271, 126 Am. St. Rep. 436, 15 L. R. A. (N. S.) 884; where a retailer was held not liable to a consumer on an implied warranty that a chicken he sold her was wholesome food. In that case, however, the vendee selected the chicken herself. In *Chapman* v. *Roggenkamp,* 182 Ill. App. 117, it was held the warranty was implied that the peas were fit for consumption, in a sale of canned peas by a retailer to a consumer. But see *Bigelow* v. *The Maine Cent. R. R.,* 110 Me. 105; *Julian* v. *Laubenberger,* 16 Misc. (N. Y.) 646, (*contra*). Where the vendor is not a regular dealer there is no implied warranty: *Burnby* v. *Bollett,* 16 M. & W., 644; *Emmerton* v. *Mathews,* 7 H. & N. 586; *Smith* v. *Baker,* 40 L. T. N. S. 261; *Farrell* v. *Manhattan Market Co.,* (*supra*) (*dictum*); *Hoover* v. *Peters,* 18 Mich. 51 (*contra*) nor is a warranty implied where the food is bought for immediate consumption by animals: *Nat'l Cotton Oil Co.* v. *Young,* 74 Ark. 144, 4 Ann. Cas. 1123; *Lukens* v. *Freiund,* 27 Kan. 664; *Houk* v. *Burg* (Tex.) 105 S. W. 1176; *Houston Cotton Oil Co.* v. *Trammell,* (Tex. Civ. App.), 72 S. W. 244. There is no principle which will reconcile all the cases. In *Winsor* v. *Lombard,* 18 Pick. (Mass.) 57, Shaw, C. J., said that the retail vendor of food for domestic consumption is from the nature of his calling presumed to know whether a given article is sound and wholesome. This principle is made the basis of many decisions. See note, 15 L. R. A. (N. S.) 884. It does not, however, account for *Chapman* v. *Roggenkemp,* (*supra*), nor *Hoover* v. *Peters,* (*supra*). In the former case it was said: "Where, however, articles of food are purchased from a retail dealer for immediate consumption, the consequences resulting from the purchase of an unsound article may be so serious and may prove so disastrous to the health and life of the consumer that public safety demands that there should be an implied warranty

on the part of the vendor that the article sold is sound and fit for the use for which it was purchased." This doctrine will not reconcile all the cases, though they all seem to follow the one rule or the other.

SALES—SALE FOR "CASH ON DELIVERY"—PASSING OF TITLE.—F. made a bid for cotton brought to market by H., and left instructions to have the cotton ginned at a certain gin, if his bid was accepted. H. accepted the bid and took the cotton to the gin. About this time, exactly when does not appear, the plaintiff, a judgment creditor of H., garnished F. as having in his hands money due to H. F. returned the cotton, and justifies his act on two grounds, one being that the sale to him was for cash on delivery, and since he had not yet paid for the cotton, the title to it remained in H. *Held,* defense good, that where a sale is for cash on delivery no title passes to vendee until payment of the purchase price. *Hamra Bros.* v. *Herrell,* (Mo., 1918), 200 S. W. 776.

It is a presumption of the law of sales, that in contracts for the sale of specific goods in which nothing remains to be done but the making of delivery or paying of the purchase price, or both, title passes immediately to the vendee. *Tarling* v. *Baxter,* 6 Barn. & Cress. 360; *Clark* v. *Greeley,* 62 N. H. 394. This presumption may, of course, be overcome by showing the intent of the parties that title shall remain in the vendor until such time as they desire. The court in the principal case holds, that as a matter of law, the making of the terms of the sale "cash on delivery" rebuts the presumption of immediate passage of title, and makes the payment of the purchase price a condition precedent to such passage. The use of the term "cash on delivery" here is rather unfortunate. The great majority of cases where goods are sent "C. O. D." by common carrier hold that title passes on delivery to the carrier, and the payment of the price is merely a condition precedent to the delivery of possession. *Commonwealth* v. *Fleming,* 130 Pa. 138; *Pilgreen* v. *State,* 71 Ala. 368. But see *Lane* v. *Chadwick,* 146 Man. 68. Missouri also has taken this view, *State* v. *Rosenberger,* 212 Mo. 648, cited with approval in *State ex rel. Weatherby* v. *Brewing Co.,* 270 Mo. 100; *State* v. *Palmer,* 170 Mo. App. 90. In these cases the meaning of "C. O. D." is, apparently, primarily "collect on delivery". But it also has the connotation "cash on delivery". *Newhook* v. *Ryan,* 9 Newf. 220. Yet the courts, when using the full term "cash on delivery", rather than the abbreviation "C. O. D.", tend to apply it to cases where the shipment is not by carrier, and to use it as synonymous with "cash sale". See *Paul* v. *Reed,* 52 N. H. 136, where the payment was to be made in person to the vendor, and *Boyd* v. *Bank of Mercer County,* 174 Mo. App. 431, where a check was to be mailed to the seller. The tendency in these cases is to consider the payment of the purchase price a condition precedent to the passage of title, not merely of possession. *Leven* v. *Smith,* 1 Denio (N. Y.) 571; *Pinkham* v. *Appleton,* 82 Me. 574. The distinction is clearly marked as running throughout the Missouri cases, *State* v. *Rosenberger, supra,* being cited as the law in C. O. D. by carrier cases, and holding that title passes and possession merely is held up; and *Johnson-Brinkman Co.* v. *Central Bank,* 116 Mo. 558, in the others, of "cash on deliv-